REMARKS

Claims 1-3, 5, 7-8, 10-11, 14-16, 18-21, 23, 25, 28-29, 32 and 35-36 are currently amended. Claims 1-37 are pending in the application.

Applicants acknowledge the decision to reopen prosecution on the merits of Applicants' arguments and request for continued examination under CFR 1.114, filed on December 7, 2009. Applicants appreciate the withdrawal of the finality of the previous Office Action. Applicants acknowledge that new grounds of rejection have been presented by the Examiner.

Claim Rejections – 35 U.S.C. §112

The Examiner rejected claims 1-37 under 35 U.S.C. §112, first and second paragraphs, as failing the written description requirement and as not particularly pointing out what is claimed. Applicants respectfully traverse this rejection.

With respect to the Examiner's rejection of the claim term "first remote system to generate a response," Applicants respectfully direct the Examiner's attention to the Specification, page 18, lines 19-20, which states: "In alternative embodiments, the client system 5 may select (at 334) the remote system 20 based on any other type of information provided in the response(s) by the remote systems 20." Specification, page 18, lines 19-20 (*emphasis added*). Applicants respectfully submit that a time stamp, as is known in the art, may be included in a packet (here, *e.g.*, the response) and that such a time stamp may be used to determine which remote system is first to generate a response, as called for in claim 1. "While there is no *in haec verba* requirement, newly added claim limitations must be supported in the specification through express, implicit, or inherent disclosure." MPEP §2163(I)(B). Applicants respectfully submit that responses are expressly described in the Specification, and that a time stamp in a response,

which may be used to determine which <u>remote system is first to generate a response</u>, is at least implicitly and/or inherently included in the Specification.

During the Examiner Interview dated March 3, 2010, the Examiner indicated that one of skill in the art would know that if network delay was "negligible," United States Patent No. 7,590,746 *(Slater)* would teach the claimed feature of "first remote system to respond" as well as a first response to be received. Applicants respectfully assert that the Examiner's argument is improper and inconsistent. Applicants respectfully assert that the Examiner is inconsistently applying the knowledge of one of skill in the art. For example, the Examiner argues that the feature of the "first remote system to respond" is not supported by Applicants' Specification, but that through the disclosure of a "server [with] the quickest response time" in *Slater*, a person of ordinary skill in the art would discern a "first remote system to respond," assuming "negligible" network delay. *See Slater*, col. 1, ll. 50-55. Applicants respectfully submit that regardless of the Examiner's qualification of "negligible" network delay, it is improper and inconsistent to argue that a "server [with] the quickest response time" in *Slater* can teach this claimed feature, all the while insisting that Applicants' Specification (which states "[i]n one embodiment, the delegating module 27 may select a remote system 20 based on a priority (or selection) scheme" and "select[ing] the remote system 20 based on <u>any other type of information provided in the response(s)</u>" [*emphasis added*]) cannot teach this claimed feature.

Further, even assuming, *arguendo*, a qualification of "negligible" network delay in order for a person of skill in the art to realize that a "server [with] the quickest response time" in *Slater* can teach this claimed feature, a similar qualification could just as easily be applied to the instant Application. If such were the case, a person of ordinary skill in the art would understand, with

the benefit of the instant Application, that a "first remote system to respond" is fully supported therein.

Still further, Applicants respectfully submit that the Examiner's qualification of "negligible" network delay is technically incorrect when applied to the claims as the Examiner attempts to do. In other words, when "assigning the task from the task list to a remote system…that responds first," as recited in claim 1, "negligible" network delay may still impact the assignment at least because the remote system that "responds first" may not be the remote system whose response is received first. For example, assuming a 1 ms network delay for remote system A and a 2 ms delay for remote system B, even if remote system B responds 0.5 ms faster than remote system A (*i.e.*, B responds first), the response of remote system A would be received first. In contrast, claim 1 calls for "assigning the task from the task list to a remote system…<u>that responds first</u>." As can be seen by this example, even with "negligible" network delay (*e.g.*, 1ms or 2ms), the Examiner's position is not correct technically, and is untenable. To the extent that the Examiner meant to express a qualifier of "zero network delay," this argument would clearly be strictly theoretical and inapplicable to the present claim set.

As such, Applicants respectfully request the Examiner's rejection be withdrawn.

With respect to the Examiner's rejection of the claim term "physical attributes," Applicants respectfully point out that the Specification and drawings depict numerous examples of "physical attributes." For example, the Specification recites: "In other embodiments, the client system 5 may require that the responding remote systems 20 have <u>memory of at least a particular size</u> or a <u>network adapter of a particular speed</u>, *etc.*" Specification, page 15, line 25 to page 16 line 2 (*emphasis added*). Clearly the Specification provides support for "physical attributes," as recited in the claims, regardless of whether the term "physical attributes" is used

verbatim in the claims. "While there is no *in haec verba* requirement, newly added claim limitations must be supported in the specification through express, implicit, or inherent disclosure." MPEP §2163(I)(B). Applicants submit that "physical attributes" are expressly, implicitly, or inherently disclosed. While the Examiner's rejection of the "physical attributes" claim language is facially incorrect, amended claims 1, 10, 18, 19, 29, 32 and 35 now recite "without comparing <u>operational capabilities</u>." Support for this amendment is found in the Specification at page 3, line 17 through page 4, line 18.

With respect to the Examiner's rejection of claim 1 for lack of antecedent basis on line 6, Applicants have removed the word "the" as indicated by the Examiner.

With respect to the Examiner's rejection of claims 10, 18 and 19 for lack of antecedent basis, these claims have been amended to recite "<u>two or more</u> remote systems" and correct any antecedent basis issues.

For at least these reasons, Applicants respectfully request the Examiner's rejections of the claims under 35 U.S.C. §112, first and second paragraphs, be withdrawn.

Claim Rejections – 35 U.S.C. 103(a)

Claims 1, 3-7, 9-15, 17-19, 28, 29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,192,388 *(Cajolet)* in view of US 7,590,746 *(Slater)* and further in view of Official Notice. Applicants respectfully traverse this rejection.

Claim 1 is discussed first. Claim 1 has been amended to recite, *inter alia*, assigning the task from the task list to a remote system of the at least two remote systems that responds first to the indication that the task is available for processing, and wherein assigning the task is performed <u>without comparing operational capabilities of the at least two remote systems to each</u>

other. Support for this amendment is found in the Specification at page 3, line 17 through page 4, line 18:

> "In some systems, clients may delegate tasks to the volunteer machines using a simplistic circular, round-robin scheme. In other systems, a client gathers information about the operational capabilities (*e.g.,* processor speed, availability) of the various volunteer machines, and then assigns the tasks to the volunteer machines based on the operational capability of the volunteer machine. **Each of these schemes, however, has its drawbacks**." (*emphasis added*).
>
> "[S]chemes in which the client first gathers information about the various volunteer machines before work is assigned also tend to be inefficient and inflexible. This is because the client machine (or another machine that is designated to gather the information) is constantly burdened with the responsibility of ascertaining the operational capabilities of the various volunteer machines on the network and then ensuring that these operational capabilities are up-to-date. Constantly maintaining an up-to-date list of the various volunteer machines can be inefficient, particularly if some of those volunteer machines are rarely or never utilized." (*emphasis added*).

Applicants respectfully assert that *Cajolet, Slater* and/or their combination fail to teach, among other things, assigning a task from a task list to a remote system without comparing operational capabilities of the at least two remote systems to each other.

In an Examiner's Interview conducted on December 3, 2009, Applicants' representatives and the Examiner discussed possible amendments to the claims to overcome the cited prior art. (See Examiner's Interview Summary on page 2 of Applicants' Response dated December 7, 2009). During the December 7th Interview, the Examiner and Applicants' representatives agreed that the claimed feature of "assigning the task is performed without comparing physical attributes of the at least two remote systems to each other" was not taught by *Cajolet* and/or *Bantz*, alone or in combination. Subsequent to the current Office Action, Applicants have amended claim 1 to recite "without comparing operational capabilities."

Applicants respectfully submit that *Cajolet* and/or *Slater*, alone or in combination, fail to teach this claimed feature, as amended. In the current Office Action, the Examiner admits that

Cajolet does not teach this claimed feature. *See* Office Action, p.5. The Examiner, however, argues that *Slater* teaches this claimed feature because *Slater* allegedly discloses a load balancing technique for assigning a request service to a server which replies fastest to an investigatory signal. *See* Office Action, p.5. *Slater* teaches a load-balancing technique which inherently considers <u>operational capabilities</u> of the web tier servers. In other words, the load of the server is a measure of its current <u>operational capabilities</u>. Additionally, *Slater* discloses that the primary factor in determining if a server has a fast response time is "whether the data content web tier server has a dedicated IC (interface card) or not." *See Slater*, col. 1, lines 55-63. Clearly this demonstrates that *Slater* relies upon a server's <u>operational capabilities</u> in determining which server has the fastest response time. In contrast, claim 1 recites "assigning a task from a task list to a remote system <u>without comparing operational capabilities</u> of the at least two remote systems to each other." As such, Applicants respectfully submit that *Slater* does not, and cannot teach this claimed feature. As previously mentioned, the Examiner has admitted that *Cajolet* also does not teach this claimed feature.

Claim 1 also recites "assigning the task from the task list to a remote system of the at least two remote systems that <u>responds first</u> to the indication." In the Office Action, the Examiner admits that *Cajolet* does not teach this claimed feature. *See* Office Action, page 5. The Examiner, however, argues that *Slater* teaches this claimed feature because *Slater* allegedly discloses a load balancing technique for assigning a request service to a server which replies fastest to an investigatory signal. *See* Office Action, p.5. *Slater* teaches a load-balancing technique employed by a director server which waits for replies from web tier servers. *See Slater*, col. 1, lines 50-55. *Slater* describes how the director servers use this technique for "measuring response time." *See id.* at lines 55-56. In other words, *Slater* does not determine

which web tier server is the first to respond. Rather *Slater* teaches that the web tier server measures response time, or, put another way, *Slater* measures the time from the sending of the investigatory signal until the receipt of the web tier server response. In contrast, claim 1 calls for "assigning the task from the task list to a remote system of the at least two remote systems that responds first to the indication." As such, *Slater* does not, and cannot, teach this claimed feature, and *Cajolet*, as admitted by the Examiner, fails to remedy the fundamental deficiencies of *Slater*.

Applicants respectfully submit that for at least this reason, as well as arguments presented during the course of this prosecution, claim 1 is allowable. For at least these reasons, the claim 1 dependent claims [2-9] are allowable. For at least similar reasons, claims 10, 18, 19, 29, 32 and 35 (and their respective dependent claims) are also allowable.

The Examiner rejected claims 2, 8, 16, 20-27, 30 and 32-37 under 35 U.S.C. §103(a) as being unpatentable over *Cajolet* in view of *Slater* and further in view of some combination of US 2007/0011226 *(Hinni)*, US 2002/0087612 *(Harper)*, US 2002/0007389 *(Jones)* and *ON*. Applicants respectfully traverse this rejection.

While the Examiner has rejected the remaining claims [2, 8, 16, 20-27, 30 and 32-37] over *Cajolet* and *Slater* in view of various and sundry references, Applicants respectfully submit that the independent claims 1, 10, 18, 19, 29, 32 and 35, as shown above, are allowable over *Cajolet* and *Slater*. Therefore, the remaining claims are also allowable for at least this reason.

Reconsideration of the present application is respectfully requested.

In light of the arguments presented above, a Notice of Allowance is respectfully solicited. If for any reason the Examiner finds the application other than in condition for allowance, **the Examiner is requested to call the undersigned attorney** at the Houston, Texas telephone

number (713) 934-4069 to discuss the steps necessary for placing the application in condition for

allowance.

Respectfully submitted,

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Date: <u>April 12, 2010</u>

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